sole over mortgaged property upon suit of the mortgagee, before the mortgage debt is due and when the property is in danger of being dissipated.[14] These cases have been differentiated from those of unsecured creditors on the ground that the plaintiff here has a property interest. But this also merely strengthens the equity of the plaintiff's case, and the courts, in reaching their result, must be deciding that there is a "case" involved, despite the fact that a receiver is the only relief sought.[15]

On the other hand, the same courts, if these particular facts are not present, will apply the general rule though the plaintiff is just as clearly claiming a remedial right and seeking its adjudication. This inconsistency can only be explained on the ground that courts, chary of overturning precedents, have felt moved to do so only in cases where the plaintiff's claim was peculiarly strong.[16] Their conservatism in this respect is to be deplored and the initiative of the court in *Thompson's Receivership* to be commended. Where the plaintiff has a true remedial right [17] and a receiver is a convenient method of relief,[18] a court should not refuse to take jurisdiction because of a traditional rule which is clearly wider than its reason.[19]

RAISING FREIGHT RATES OF INTERSTATE RAILROADS AFTER ELIMINATION OF WATER COMPETITION. — Section 3 of the Interstate Commerce Act requires that no undue preference in freight rates shall be given by a carrier to one locality over another.[1] The first part of section 4 provides

perhaps be upheld by a resort to the visitorial jurisdiction, even if the case is one of mere guardianship. For a discussion of the visitorial power of chancery over public institutions, see 1 BLACKSTONE, COMMENTARIES, 480–81; 2 KENT, COMMENTARIES, 300–03. Such an explanation of these cases has been hinted at by a modern textwriter. BEACH, RECEIVERS, 2 ed., 75.

[14] Rose *v.* Bevan, 10 Md. 466; Long Dock Co. *v.* Mallery, 12 N. J. Eq. 431.

[15] See Davis *v.* Alton, Jacksonville & Peoria Ry. Co., 180 Ill. App. 1, where the court, though refusing to grant a receiver upon other grounds, expressly recognizes that the fact that there is no other relief sought to which the appointment of a receiver is incidental is not necessarily fatal to the court's jurisdiction.

For another situation in which courts have granted a receiver where no other relief was sought, see American Freehold Land Mortgage Co. *v.* Turner, 95 Ala. 272, 11 So. 211.

[16] As in the case of public service corporations, where the plaintiff could invoke a strong public policy, and in the mortgage cases, where he has a lien interest in the property.

[17] Whether or not the plaintiff has stated a case in which equity should act must be determined by a balancing of the considerations on both sides, in the particular case, on ordinary principles.

[18] Once establish the right to relief, and it cannot be questioned that the principal case is one where the use of the extraordinary remedy of a receivership is proper. It is indeed the only method by which the situation can be adequately handled. See HIGH, RECEIVERS, § 7; BEACH, RECEIVERS, 2 ed., § 48.

[19] Whether or not jurisdiction of the parties whose action the plaintiff is seeking to prevent by the receivership should be necessary, since their rights are in a sense being adjudicated, is an arguable question. There is no personal decree against them. The decree runs against the property and is enforced *in rem*. The property is merely taken under the protection of the court for a time. In so far as it does adjudicate any rights of parties not before the court, the only result of such adjudication is the temporary postponement of the enforcement of a legal right. It would seem that a service by publication at most should be sufficient. See the remarks of the court in the principal case, 44 Pa. County Court, 518, 532.

[1] U. S. COMP. STAT. 1913, § 8565, in part provides: "It shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unrea-

(really as a particular application of section 3) that, except in special cases which the Commission permits, a carrier shall not charge lower rates for a longer haul of freight than for a shorter haul over the same route.[2] In determining whether under section 3 a preference is proper or undue, the existence of competition is a decided argument for its propriety.[3] Also the existence of competition may constitute grounds for the Commission to make one of the special exceptions to the long and short haul clause of section 4.[4] Consequently it may well be that, because of water competition a rate to a certain place is unimpeachable; and that yet, if the competition ends, the rate will become unduly preferential under section 3 and unjustifiably violative of the long and short haul clause of section 4. One of the main purposes of the Act is to prevent unjust discrimination by carriers.[5] If this purpose is to be completely carried out, wherever the cessation of competition causes a discrimination under either of the above provisions, the Commission must give the appropriate relief. The circumstances may be such that the only appropriate relief would be for the rates at the preferred point to be raised.[6] But the Act itself to some extent prevents such a course. The last paragraph of section 4 provides that, if a "railroad shall in competition with a water route . . . reduce" its rates and the competition shall cease, the road "shall not be permitted" to increase them unless the Commission finds that the increase depends on some other change of conditions besides "the elimination of water competition." [7] This inhibition apparently applies both where the rates as they stand create an undue preference under section 3 and where they violate the long and short haul clause of section 4. Thus the general policy of the Act is under these circumstances expressly dispensed with, in order to penalize the railroad by depriving it of the greater revenues that would come with increased rates. This penalty, in turn, was imposed to discourage a common practice among railroads of

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sonable preference or advantage to any particular . . . locality in any respect whatsoever, or to subject any particular . . . locality . . . to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

[2] U. S. Comp. Stat. 1913, § 8566, in part provides: "It shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation . . . of like kind of property for a shorter than a longer distance over the same line or route in the same direction, the shorter being included within the longer distance . . .: Provided, however, that upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for the longer than for the shorter distances for the transportation of . . . property."

[3] East Tennessee, etc. R. Co. *v.* I. C. C., 181 U. S. 1; I. C. C. *v.* Cincinnati, etc. R. Co., 124 Fed. 624.

[4] Commodity Rates to Pacific Coast Terminals, 32 Int. Com. Rep. 611.

[5] See 1 Drinker, Interstate Commerce Act, § 19.

[6] Raising the terminal rates would seem to be the only appropriate relief where, for example, the rates to the intermediate points were as low as they could reasonably be and hence could not well be lowered.

[7] The entire last paragraph of U. S. Comp. Stat. 1913, § 8566, reads: "Whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition."

destroying competition by undue reduction of rates and then taking advantage of the destruction by raising the rates again.[8]

The water competition provision, upon analysis, raises several questions of construction, which mere examination of the language will not answer. These must be decided with a proper regard for the purpose of the provision and for its relation to the rest of the Act. First of all, it may be questioned whether the provision applies where the railroad originally reduced the rates only after approval by the Commission, or applies merely where it reduced them without such approval. There is the possible contention that the approval of the Commission would purge the reduction of any unfairness to competitors and that therefore, where there is such approval, no penalty should be imposed on the railroad. But clearly the water competition provision of section 4 was intended to apply to rates reduced under the rest of section 4. And under this section the special exception of a lower rate for a longer haul can be made by the carrier only on application to the Commission.[9] Since this case must be included, if at all, within the general terms of the provision, it would seem that the provision always applies, although the original reduction was made on application to the Commission. Another question is whether the provision prevents action by the Commission, where, after the competition is eliminated, the application to have the rates advanced is made, not by the railroads but by the places injuriously affected by the reduced rates. The words of the Act, "it [the railroad] shall not be *permitted*[10] to increase such rates," would more naturally, though not necessarily, cover only the case where the *railroad* is seeking to raise the rates. Moreover, unless the provision were so construed it would really penalize the shippers and not the railroads. But such is a likely consequence of any restraint on the Commission's power to prevent discrimination. And in these cases, unless the shippers were so penalized, the railroads might freely reduce the rates and destroy water competition, secure in the knowledge that almost surely an application for advanced rates will be made by and granted to points harmed by the lower competitive rate. On the whole, it seems a more reasonable construction to deny the application of these points. The word "elimination" in the provision gives rise to still another question. Literally the Act might be considered to apply, whatever cause there was for the elimination of water competition. But where the competition has been destroyed by something other than low railroad rates, there is no reason at all for penalizing the railroad by making it maintain its low rates. No more reason is there for preventing prejudiced shippers from having the rates raised. In view of this it seems preferable to give "elimination" a construction favored by the context, to hold the provision applicable only where the competition has been eliminated by the reduced railroad rates.[11] In a recent case[12] before the

[8] See RIPLEY, RAILROADS: RATES AND REGULATIONS, 566.

[9] See JUDSON, INTERSTATE COMMERCE, 3 ed., § 342.

[10] Italics ours.

[11] Cases which permit railroads to establish higher rates to competitive points during winter months have been put, not on this ground, but on the ground that this temporary suspension of competition is not an elimination of it. Such cases are American, etc. Co. *v.* Chicago, etc. Ry. Co., 26 Int. Com. Rep. 415; New York Produce Exchange *v.* New York, etc. R. Co., 32 Int. Com. Rep. 212, 215.

[12] In the matter of Reopening Fourth Section Applications, 40 Int. Com. Rep. 35. For a fuller statement, see RECENT CASES, p. 291.

Commission, after the railroads on application to the Commission under the long and short haul clause had reduced their rates to a competitive port, and after the water competition subsequently ceased because the water routes were blocked, the Commission favored an application of intermediate cities to have the terminal rates raised. The best explanation of this case, it is submitted, lies not in the fact that the Commission supervised the original reduction of the rate, nor in the fact that a shipper and not the railroad sought the advance of rates, but in the fact that the destruction of the water competition was not due to the reduced railroad rates.[13]

THE BRITISH BLACK LIST. — On December 23, 1915, Great Britain passed "an Act to provide for the Extension of the Restrictions relating to Trading with the Enemy," to the following effect: "His Majesty may by Proclamation prohibit all persons . . . resident, carrying on business, or being in the United Kingdom from trading with any persons . . . whenever by reason of the enemy nationality or enemy association of such persons . . . it appears to His Majesty expedient so to do. . . ."[1] A Black List of neutral firms with which English firms and steamship lines have been forbidden to deal is the result of the proclamations issued as provided by the act, and reënforced by applications of the Order in Council for November 10, 1915, requiring licenses for British steamers over five hundred tons to trade from one foreign port to another. The consequences have been financially serious for many of such blacklisted neutral firms, because most of the international trade is now being carried on British bottoms. Protest has been made by the United States, and a diplomatic correspondence has followed.[2] Complaints in this country have been specially bitter owing to suspicions that the use of the Black List has not been confined to belligerent purposes, but that it has been used to keep American firms out of that part of the South American trade which Germany shared with Great Britain before the war.[3]

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[13] The decision, however, was put principally on the grounds (1) that the rates in the absence of competition were unduly preferential, and (2) that raising of the rates would tend to encourage competition again and thus accomplish the purpose of the provision. The first reason is not a sound one, for, as we have shown, the provision is an exception to the policy of the Act in preventing undue preferences. Nor is the second reason more valid; for the same reason might be urged in any case where the provision was to be applied, and, if sound, it would render the provision nugatory.

[1] Trading with the Enemy (Extension of Powers) Act 1915, 5 & 6 GEORGE 5, c. 98.

[2] On January 25, 1916, Secretary Lansing sent a note expressing the disapprobation of the United States and reserving a protest, which was answered on February 16 by a brief explanation of the purposes and scope of the act. On July 26 the United States sent a formal protest, denying the legality of the measure and qualifying it as "inconsistent with that true justice, sincere amity, and impartial fairness which should characterize the dealings of friendly governments with one another." On October 12, Ambassador Page received a formal defense from Viscount Grey. This correspondence will be found in the White Book published by the State Department. This so far covers only up to April 16, 1916, but the British defense, the most important of the documents, will be found in the NEW YORK TIMES of November 15, 1916.

[3] See the allusion in paragraph eight of the British note in October, and also the remarks of Congressman Bennet of New York in 53 CONGRESSIONAL RECORD, No. 197, pp. 14299–304.